IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8635 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S PATEL OIL INDUSTRIES

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8635 of 1995

MR BP GUPTA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

NOTICE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner is a partnership firm carrying on

business at Motikukavav, Dist. Amreli. An inspection was carried out at the factory premises of the petitioner on 25th October 1993, during which, a Truck bearing Regn. No. GTS-5937 loaded with 500 ground-nut oil tins, standing near the gate of the factory of the petitioner, was noticed. The goods was seized on the ground that the Truck driver was not in possession of the bill, gate pass etc. When the partner of the firm was called, he was having the same and handed over the same to the driver of the Truck for delivery of the goods. The Investigating authority has seized the following goods:

Item	Quantity	Rate	Value
Groundnut oil	250	Rs. 430 + tax	1,11,800
Groundnut oil	250	Rs. 431 + tax	1,12,060
Truck No. GTS 5937			1,25,000
Groundnut	6965	Rs. 185 per 20 kg.	64,426.25
Total			4,13,286.25

2. A show cause notice was issued by the Collector, Amreli, on 3rd April 1993, pursuant to which, the petitioner filed the detailed reply on 3rd June 1993. After considering the reply of the petitioner, the Collector, Amreli passed an order on 8th September 1995 whereby the 500 groundnut oil tins, the value of which is Rs.2,23,860/- were confiscated and the truck and the other goods were released.

3. Being aggrieved by the order of the Deputy Collector, the petitioner preferred Revision Application No. 554 of 1992 wherein the authority has reduced the penalty from 100% to 80%.

4. Learned Advocate Mr.Gupta for the petitioner has submitted that the allegation levelled against the petitioner was that at the relevant time the driver was not having gate pass, bill etc. and there is no intention on the part of the petitioner to commit any serious irregularity. Mr.Gupta has strongly relied upon the judgment in the case of Patel Ambaram Kuberbhai v. State of Gujarat and ors., reported in 1998 (2) GLH 533 more particularly paragraph 10, which reads as under:

> "So far as merits are concerned, prima facie, the learned Counsel for the appellant is right that no finding regarding black-marketing or hoarding

> has been recorded nor such allegation was made. As observed by a learned Single Judge in M/s.Govind Karsan & Co. v. State (1983) 24 (1) GLR 145, if there is no intention of black-marketing or hoarding on the part of the person committing breach of the provisions of the Order, the Court may exercise discretion by reducing the penalty."

5. In my view, the authority has wrongly imposed the penalty of 80% and therefore, the order is required to be modified and if the penalty is reduced to 50%, the ends of justice will be served.

6. In the result, the petition is partly allowed. The order passed by the Deputy Secretary is modified and the penalty of 80% of the confiscated goods is reduced to 50%. Rule is made absolute accordingly. No order as to costs.

(K.S. Jhaveri, J.)

Sreeram.